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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 96-45
Federal-State Joint Board on	)	(Report to Congress)
Universal Service	)	

REPLY COMMENTS OF BELL ATLANTIC

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I. Introduction and Summary

The comments filed on the Commission's forthcoming report to Congress[2] raised a number of issues regarding the May 8, 1997 Universal Service Order, ***Report and Order***, 12 FCC Rcd 8776 (1997) ("May 8 Order"), and the ***Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72***, FCC 97-420 (rel. Dec. 30, 1997) ("December 30 Order"). Bell Atlantic will confine this reply to two sets of issues.

First, retaining the current formula whereby the Commission funds 25% of the universal service "need" will not raise local rates if the Commission permits carriers to use the federal fund to support local rates, rather than access charges and provides each

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[1] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

[2] The Commission solicited comments in its January 5, 1998 Public Notice, DA 98-2 ("Public Notice"). The report must be submitted by April 10, 1998.

state with at least its current level of federal high-cost support. Substantially increasing the size of the high-cost fund could, however, increase local rates significantly and undermine universal service in low-cost states.

Second, all providers of interstate telecommunications services should contribute to the universal service fund, and the Commission should reject additional requests for exemption. Information Service Providers ("ISPs"), including providers of Internet access, should be required to contribute to universal service support to the extent that they offer telecommunications services, even though several of them ask in their comments to be completely exempted. Consistent with the Commission's own findings in this proceeding, "conduit" providers of Internet access (i.e., those that do not provide their own content) should be classified as telecommunications service providers rather than information service providers. The Commission must also spell out for Congress the extent of the preferences that its current policies give ISPs, who need not contribute to universal service yet may recover support from the universal service fund, impose massive demands on the network, yet pay preferentially low rates for their exchange access and, in many states, receive (through their local service provider affiliates that provide part of the exchange access service) huge reciprocal compensation payments.

II. Retaining the 25% Federal High-Cost Contribution Need Not Raise Local Rates.

A number of parties, principally state commissions, urge the Commission to eliminate the 25% limitation on the proportion of the universal service "need" that will come from the federal fund. They argue that many states will be forced to increase local rates substantially in order to fund the remaining 75% of the need. Congress should be

told that this will not be the case if the Commission adopts certain modifications to its high-cost support program.

None of the commenters claims that the amount of support that local carriers receive today from the high-cost program is inadequate or that retention of the current funding level will cause local rates to rise. By providing federal support for local rates, as Section 254 of the Act envisions,[3] rather than solely for interstate access charges, and by guaranteeing each state the level of high-cost support it now receives, adjusted for inflation, the Commission can completely avoid upward pressure on local rates stemming from the high-cost universal service program. States would continue to be free to adopt or continue state programs designed to support rates in high-cost areas within a state.[4] As the state Joint Board members said it their comments, diverting federal high-cost support to interstate access charges "radically revises the current support mechanism that is focused on ensuring affordable rate for basic local services" and is "inconsistent with the Act's requirements." Members of the § 254 Federal-State Joint Board on Universal Service at 6. ***See, also*** NARUC at 4-6 (by diverting federal high-cost funds to access "the FCC has subverted Congress's intent that it take action to achieve affordable basic local telephone service in the subject high cost areas.").

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[3] ***See*** 47 U.S.C. § 254(c), which requires the Commission to define the universal services that are to be supported. The Commission has not defined interstate access as a universal service under this section and, therefore, it is not a service that the federal universal service fund should properly support.

[4] As the Commission pointed out in the May 8 Order, "states have used a variety of techniques to maintain low residential basic service rates, including geographic rate averaging, higher rates for business customers, higher intrastate access rates, higher rates for intrastate toll service, and higher rates for discretionary services." May 8 Order at ¶ 271.

On the other hand, a drastic increase in the federal fund to supplant all of the current state programs, as several parties request (***See, e.g.,***, BellSouth at 9-10, GTE at 3-5, Joint State Regulatory Agency Filing at 2-3) would have a devastating effect in lower-cost states that are net contributors into the high-cost fund. As Bell Atlantic demonstrated in its initial comments, every billion dollar increase in the universal service fund translates into a fifty cent additional cost each month for each customer line. If applied to local rates, a large high-cost universal service fund could cause local rate increases in lower-cost states of such a magnitude that universal service could be undermined. Bell Atlantic at 8-10.

Supplanting state programs with a single unified federal fund would also be inconsistent with the federal/state partnership prescribed in the Act. Section 254 does not say that the federal universal service program alone needs to be sufficient to preserve universal service, but rather that "Federal and State mechanisms" together must be "sufficient ... to preserve and advance universal service." 47 U.S.C. § 254(b)(5). Moreover, if Congress had intended the Commission to supplant state mechanisms, there would have been no need for Section 254(f), which provides for state universal service programs. In addition, consistent with this partnership, the Commission properly assessed only interstate end user revenues for the federal fund, leaving the states free to tap intrastate revenues to support state-specific universal service mechanisms. Congress clearly intended such a result when it specified that all carriers that provide interstate

service should contribute to the federal fund while those providing intrastate services must contribute to any state fund. 47 U.S.C. §§ 254(d), (f).[5]

In addition, a single federal fund providing massive support to high-cost states would amount to a federally-mandated rebalancing of local rate structures nationwide. It would preempt state jurisdiction over intrastate rates under 47 U.S.C. § 152(b), pursuant to which the states have established mechanisms to provide support for high-cost areas within each state. ***See*** May 8 Order at ¶ 271, ***Iowa Utilities Bd. v. FCC***, 120 F.3d 753, 796 (8th Cir. 1997) (Section 2(b) denies "the FCC authority over intrastate telecommunications matters"). By contrast, maintaining existing funding levels preserves the states' right to maintain these mechanisms while avoiding rate increases in either high- or lower-cost states.

One way to avoid the assessment issue entirely is for the Commission to adopt AirTouch's recommendation and urge Congress to fund universal service out of general tax revenues. AirTouch at 21-22. Congress has established a national policy to ensure that quality services are available nationwide at reasonable and affordable rates, and that schools, libraries, and rural health care providers receive their services at preferential rates. ***See*** 47 U.S.C. § 254(b). It is unfair to place the burden of financing this national policy exclusively on one industry. Although end users will ultimately foot the bill, the burden may not be spread evenly. Large business customers, with more market leverage, could well negotiate a reduced share of the contribution, leaving the

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[5] Congress would not have enacted a statutory discrimination by allowing the Commission to assess the intrastate revenues only of carriers which also offered interstate service and not of purely intrastate carriers. Such a result would give the purely intrastate providers an unfair competitive advantage.

largest burden on consumers and small business customers. In fact, according to press reports, at least one carrier is already charging small users more than their share.[6] Using tax revenues for this purpose will help spread the contribution obligation more equitably.

An existing tax that Congress could reasonably earmark for this purpose is the telephone excise tax, which yielded about $4.5 billion in 1997 and is estimated to rise to $4.8 billion this year. That amount approximates the $4.65 billion total of current federal universal service support, which includes about $1.5 billion for rural, insular, and high-cost areas, $2.25 billion for schools and libraries, $.4 billion for rural health care providers, and about $ .5 billion for Lifeline and Linkup support.

III. All Telecommunications Service Providers Should Contribute to Universal Service.

Some of the parties reiterate their previously-denied claims that they should not be required to contribute to universal service support, ***e.g.,*** Business Networks of New York at 2, UTC at 5-6 (private line services), while others newly request such an exemption, ***see, e.g.*** Amtrak at 1-4, Telecommunications Resellers Association at 8-11, Access Authority at 2-5 (revenues from international services). The Commission should tell Congress that it has properly denied most of such claims in the past. Congress required all telecommunications carriers to contribute, 47 U.S.C. § 254(d), and the Commission can report that it has adopted a complementary public policy not to allow any telecommunications provider to avoid its obligation to help support universal service

[6] M. Mills, "Some MCI Customers Seeing Surge in Phone Bills," Washington Post at H3 (Jan. 31, 1998).

for all Americans. That policy also promotes competitive neutrality. On the other hand, there was no justification for exempting certain providers of interstate telecommunications from contributing. December 30 Order at ¶¶ 277-84. ***See*** USTA at 5-6, BellSouth at 6-8.

The Commission can tell Congress that ISPs present a unique case. By definition, interstate information services are not telecommunications services,[7] and therefore providers of such services are not required to contribute directly to universal service support mechanisms.[8] Several ISPs acknowledge they provide "hybrid" services which include both telecommunications and information services. ***See, e.g.*** America OnLine at 9-10, ITAA/ITI at 6, Internet Access Coalition at 10. They argue, however, that they should be considered information service providers for the totality of these hybrid services and should not be required to make <u>any</u> direct contributions to universal service. Nothing in the statute or in any Commission policy supports that conclusion.

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[7] Under 47 U.S.C. § 254(20) information services are delivered via telecommunications but involve alteration in the form or content of the information that is sent and received.

[8] Several of the ISP parties argue that they already contribute indirectly as end user subscribers to telecommunications services, but this argument has no relevance to the issue of direct contributions. ***See, e.g.***, America Online, Inc. at 17-18, Information Technology Industry Council and Information Technology Association of America at 8-9 ("ITI/ITAA"), WorldCom, Inc. at 8-9. Although all end users may indirectly contribute some amount to support universal service, the amount of any such indirect contributions is dependent upon the extent to which the telecommunications providers choose to pass their direct contributions through to each class of customers. Even if they paid a full ***pro rata*** share of their telecommunications providers' obligation, however, ISPs' contributions would be based only upon the amount they pay the carriers for their services, not upon the revenues they receive from their own end users. As a result, their contribution level is far lower than if they contributed as telecommunications providers.

Just because a provider offers a combination of telecommunications and information services does not make its entire offering an information service.[9]

The portion of a combined offering that meets the definition of a telecommunications service should be defined as such, and the provider should be subject to assessment for the universal service fund to the extent of its end user revenues from that portion. As Senators Stevens and Burns indicate in their comments, "[a]s long as the information service provider is the entity offering the transmission, as part of its for-a-fee hybrid service, the statutory definitions do not prevent the information service provider from also being classified as a 'telecommunications carrier' to the extent that it provides transmission services." Sens. Stevens and Burns at 5.[10]

The Commission should discuss in its report the requests of the Senators and AirTouch to classify Internet "conduit" access[11] as a telecommunications service rather than an information service. Sens. Stevens and Burns at 6-7, AirTouch at 27-28 (pointing out that all telecommunications carriers, not just information providers, alter the format of information during transmission). Reclassifying Internet access as telecommunications would recognize that Internet access and exchange access for

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[9] Using this logic, if a customer subscribed to voice mail as part of a local exchange service, the entire exchange service would be classified as an information service.

[10] The Senators also point out that proposed statutory language stating that a telecommunications service does not include an information service was struck from the 1996 Act before enactment.

[11] The Commission has defined Internet conduit service as transmission of information as a common carrier or as part of a gateway to an information service, where the presentation of the information to the end user is not affected, and as including electronic mail (but not voice mail) services. May 8 Order at ¶ 444.

telephony are essentially the same function – they both allow an end user to reach information (either voice or data) housed in a distant location. This service can easily be distinguished from a true information service, in which the content of the information is stored, transformed, processed, or retrieved. ***See*** 47 U.S.C. § 153(20).

Even in this proceeding, the Commission has distinguished between Internet conduit providers, which provide access to distant databases, and content providers, which maintain their own information databases, in deciding what services should receive universal service support when provided to schools and libraries. May 8 Order at ¶ 446. It has shown that Congress, in defining electronic publishing, distinguished between a content provider, which is an electronic publisher, and an entity that provides a gateway to an information service, which is not. ***Id.*** at n.1157, citing 47 U.S.C. § 274(h)(2)(C). By the same token, the Commission should tell Congress that it will redefine as a telecommunications service provider an Internet access provider that simply provides a conduit to Internet databases, without changing "the form or content of the information as sent and received."[12] ***See*** 47 U.S.C. § 153(43) (defining "telecommunications").

In its report, the Commission should also point out the preferential treatment that its current policies afford Internet service providers. Because they are not classified as providers of interstate telecommunications services, they make no direct contributions to the universal service fund, yet they may recover universal service support

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[12] The Commission defined electronic mail as part of Internet conduit service. ***Id.*** Because it involves the storage of information, electronic mail appears to fit the definition of an information service.

to the extent that they provide Internet conduit service to schools and libraries. Under the "enhanced service provider exemption," which the Commission recently made permanent,[13] Internet service providers pay only local rates and subscriber line charges for their access. These rates do not cover the costs that they impose on the network, because of the vast volumes of traffic they generate. This has led Senators Stevens and Burns to predict that, if the exemption is retained, there will be insufficient revenue to support the local telephone infrastructure, and "the system will collapse." Sens. Stevens and Burns at 9. Because they pay so little for their network services, the Internet providers have little incentive to seek, or, if offered, to use, new, more efficient technologies, such as packet-switched services. Instead, they will retain their circuit-switched voice facilities indefinitely and continue to burden (or, if the Senators are right, to bring down) the public switched network.

Internet access providers currently pay local exchange network charges for their access services, because the Commission has classified them as "end users" for this purpose. This has produced unforeseen consequences in some states. Because of the Commission's decision to treat Internet access providers as "end users" for the limited purpose of exempting them from access charges, several state commissions have decided that Internet access providers' services are "local" when interpreting reciprocal compensation provisions of interconnection agreements, even though the Commission has repeatedly said that enhanced service providers offer jurisdictionally interstate

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[13] ***Access Charge Reform, First Report and Order***, 12 FCC Rcd 15982, ¶¶ 344, 348 (1997).

services.[14] As a result, when a competing local exchange carrier ("CLEC") provides a portion of the network service, those states have allowed that CLEC to receive reciprocal compensation from the incumbent exchange carrier based upon the amount of terminating traffic it delivers to the Internet provider. Because most Internet subscribers dial into their Internet service provider, their traffic is deemed to "terminate" at the ISP (due to the fiction that their traffic is priced as if it were "local"). Consequently, their "terminating" traffic volumes, and compensation claimed for that traffic, are very high. In fact, the reciprocal compensation paid to the CLEC may exceed the monthly revenue the incumbent receives for the entire end-to-end service, resulting in a negative cash flow for that service. It should be noted that the CLEC receiving the compensation is often an affiliate of the Internet service provider, so that the Internet provider becomes the beneficiary. The ISPs' traffic volumes have forced exchange carriers to invest hundreds of millions of dollars to augment their networks to prevent congestion from harming other customers' services. Certainly, the minimal payments ISPs make for their local service does not come close to reimbursing the local carriers for these investments. But it adds insult to injury to require local carriers also to pay for the fiction of terminating traffic to them.

In summary, Internet providers (1) do not contribute to universal service, (2) receive universal service payments, (3) pay below-cost rates for their exchange access services, (4) receive huge reciprocal compensation payments when their affiliated CLEC

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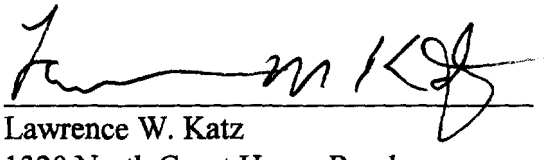
[14] ***See*** Comments of Bell Atlantic and NYNEX on Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, CCB/CPD 97-30 at 2-5 (filed July 17, 1997).

provides the terminating portion of the service, and (5) force exchange carriers to invest massive sums to maintain service to other customers. Congress should be made aware of this preferential treatment given to Internet providers under existing Commission policies.

IV. Conclusion

Accordingly, the Commission's report to Congress should address the matters discussed above and in Bell Atlantic's initial comments.

Respectfully Submitted,



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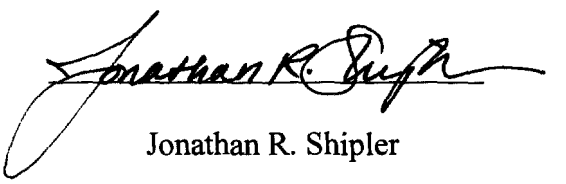
February 6, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February, 1998, a copy of the foregoing "Reply Comments of Bell Atlantic" was served on the parties listed on the attached list.



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